BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SEAN CANNON,** **Bar No. 022137** **Respondent.**	**PDJ 2022-9077** **FINAL JUDGMENT AND ORDER** (State Bar Nos. 19-2942, 20-1076) **FILED MAY 3, 2023**

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS THEREFORE ORDERED that Sean Cannon, Bar No. 022137, is suspended for 18 months, effective July 1, 2023, for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED that Respondent pay restitution within 30 days as follows: (1) $859.00 to Jose Guadalupe Zepeda Castillo; and (2) $1,296.00 to Daniel Ramirez.

IT IS FURTHER ORDERED that, pursuant to Rule 72, Ariz. R. Sup. Ct., Respondent comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $4,455.60 within 30 days.[1] There are no costs or expenses incurred by the office of the Presiding Disciplinary Judge in these proceedings.

[1] The PDJ sustains Respondent's objection to IBC's request for $900 in "legal expert" fees.

DATED this 3rd day of May, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 3rd day of May, 2023, to:

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by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SEAN CANNON,** **Bar No. 022137** **Respondent.**	**PDJ 2022-9077** **ORDER ACCEPTING AGREEMENT FOR DISCIPLINE BY CONSENT** (State Bar Nos. 19-2942, 20-1076) **FILED MAY 3, 2023**

On April 4, 2023, the parties filed an Agreement for Discipline by Consent ("Agreement") pursuant to Rule 57(a), Ariz. R. Sup. Ct. The State Bar of Arizona is represented by Independent Bar Counsel (IBC) Meredith Vivona. Respondent Sean Cannon is represented by Nancy A. Greenlee and Patricia A. Sallen. The Agreement resolves a first amended complaint filed on November 17, 2022.

Contingent on approval of the proposed form of discipline, Mr. Cannon has voluntarily waived his right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. As required by Rule 53(b)(3), Ariz. R. Sup. Ct., notice of the Agreement was sent to the complainants. Objections to the Agreement have been submitted by David Wood, Jonathan A. Dessaules, John Harris, and Daniel M. Huynh.

The Presiding Disciplinary Judge (PDJ) asked the parties to respond to the objections to the Agreement, which they did. Additionally, with the approval of the

parties, the PDJ spoke with the settlement officer in this matter – Judge Patricia K. Norris (Ret.) – regarding the adequacy of the agreed-upon sanction.

The Agreement details a factual basis in support of Mr. Cannon's conditional admissions and is incorporated by reference. *See* Rule 57(a)(4), Ariz. R. Sup. Ct. Mr. Cannon conditionally admits violating Rule 42, Ariz. R. Sup. Ct., ER 1.5, ER 1.7, ER 3.3(a)(1), ER 3.3(a)(3), and ER 8.4(d). As a sanction, the parties agree to an 18-month suspension – effective July 1, 2023, payment of restitution to two individuals, and payment of costs to the State Bar. IBC conditionally agrees to dismiss alleged violations of ER 1.15(d), ER 3.1, ER 8.4(a), and ER 8.4(c).

The Agreement describes in detail the stipulated misconduct, which is not repeated herein. Generally speaking, Mr. Cannon's law practice involves representing homeowners' associations, including collection actions against homeowners. Mr. Cannon conditionally admits that he "misrepresented the alleged debt of homeowners in foreclosure cases, making untruthful statements about the nature of the debt, and by submitting inaccurate ledgers, and that he failed to correct that inaccurate information." He also admits charging and/or collecting an unreasonable fee in several cases, as well as failing to obtain informed consent from an HOA client after he became a material witness in a particular matter.

Sanctions imposed against lawyers are determined in accordance with the American Bar Association's *Standards for Imposing Lawyer Sanctions* (ABA Standards). Rule 58(k), Ariz. R. Sup. Ct. In determining an appropriate sanction, the PDJ considers: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused

by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. ABA Standard 3.0.

Mr. Cannon violated duties owed to the legal system, the profession, and the public. The parties agree that he "knowingly made misrepresentations of facts to the court . . . negligently charged an unreasonable fee, and failed to obtain a conflict waiver." His misconduct caused actual harm. Mr. Cannon's misrepresentations "caused delay, prevented the court from serving in its oversight role, and cost the court time and resources." The parties further stipulate that there was actual harm to several homeowners, the legal system, and the legal profession.

The parties agree that the presumptive sanction under the ABA Standards is a suspension based on Standard 6.12, which states:

> Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Agreement recites three aggravating factors: (1) dishonest or selfish motive; (2) vulnerability of victim; and (3) substantial experience in the practice of law. The record also establishes the aggravator of multiple offenses.[1]

[1] Mr. Cannon also has a prior disciplinary history, which is an aggravating factor under the ABA Standards. His prior discipline consists of a censure (now known as a reprimand) imposed in 2008, so this aggravating factor is offset by the mitigating factor of remoteness of prior offenses. Although the factors are offsetting, it is preferable for consent agreements to disclose the existence of prior discipline so that the PDJ may make a fully informed decision. The absence of prior discipline is often a significant factor in

The Agreement identifies three mitigating factors: (1) personal or emotional problems; (2) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and (3) delay in disciplinary proceedings. However, the brief description of Mr. Cannon's asserted "personal or emotional problems" is not compelling and establishes no nexus between his most serious misconduct – dishonesty – and the stated personal or emotional problems. *See, e.g., In re Augenstein*, 178 Ariz. 133, 137 (1994) (more than self-serving testimony is required to prove personal or emotional problems as a mitigating factor); *In re Peasley*, 208 Ariz. 27, 40 (2004) (disability is a mitigating factor "only if there is a direct causal connection" between it and the misconduct). As a result, the PDJ does not rely on this mitigating factor. The PDJ does, however, give relatively significant weight to the mitigating factor of delay in disciplinary proceedings. The charges at issue were filed in 2019 and 2020, and Mr. Cannon is not at fault for the delay.

Rule 58(k) encourages a proportionality analysis where appropriate, though proportionality review is admittedly an "imperfect process." *In re Phillips*, 226 Ariz. 112, 119 (2010). Two relatively recent consent agreements that were accepted by the PDJ offer some guidance: *In re Gable*, PDJ 2018-9121, and *In re Beauchamp*, PDJ 2021-9004. Mr. Cannon's misconduct shares some similarities with each of these cases, which resulted in an 18-month suspension and a 24-month suspension, respectively. Although the PDJ

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the PDJ's analysis. *See, e.g., In re Owens*, 182 Ariz. 121, 127 (1995) (lengthy law practice "with a spotless disciplinary record is a very substantial mitigating factor.").

shares IBC's view that the stipulated 18-month suspension is "on the low end of an acceptable range of sanctions," it is not a complete outlier.

The PDJ seriously considered rejecting the 18-month suspension as inadequate. The objections to the Agreement are compelling.[2] By their nature, though, consent agreements represent a compromise. IBC vigorously investigated the charges and concluded that an 18-month suspension was sufficient to achieve the goals of the disciplinary process. The settlement officer who spent hours with counsel and Mr. Cannon also believes the agreed-upon sanction is reasonable under the circumstances. As IBC stated in her memorandum addressing the objections to the Agreement:

> The Consent Agreement was the product of prolonged settlement discussions. The length of the long-term suspension was supported by the parties' experienced settlement conference officer who had the benefit of meeting Respondent. IBC acknowledges the agreement is on the low end of an acceptable range of sanctions. As with any settlement, the term of suspension was negotiated after consideration of the fact disputes that exist in this case, the burden of proof, the purpose of attorney discipline, and the interest of judicial economy. Taking these factors into account, the agreement is within the range of acceptable outcomes.

The responsibility to determine the appropriate measure of discipline "imposes a concomitant responsibility to pay special care to the purposes served by such discipline." *In re Rivkind*, 164 Ariz. 154, 157 (1990). The objective of attorney discipline proceedings "is not to punish the lawyer, but to protect the public and deter similar conduct by other lawyers." *Id*. The Agreement is not perfect. It does, however, ensure that Mr. Cannon

[2] The PDJ considered only the allegations of the First Amended Complaint in reviewing the objections.

will be removed from the practice of law in short order and that, if he wishes to again practice law in Arizona, he will be required to go through the rigorous reinstatement process established by Rule 65, Ariz. R. Sup. Ct.

For the reasons stated

I**T IS ORDERED** accepting the Agreement. A final judgment and order is signed this date.

DATED this 3rd day of May, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 3rd day of May, 2023, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, SEAN CANNON, Bar No. 022137, Respondent.	**PDJ -2022-9077** State Bar Nos. 19-2942 & 20-1076 **AGREEMENT FOR DISCIPLINE BY CONSENT**

The State Bar of Arizona, through Independent Bar Counsel ("IBC"), and Respondent, through counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on September 19, 2022. IBC filed a Complaint on September 26, 2022, and filed a Notice of Service of Complaint on September 27, 2022. Before Respondent answered, IBC filed a First Amended Complaint on November 17, 2022.

Respondent filed his Answer on December 6, 2022. The Presiding Disciplinary Judge ("PDJ") held an initial case management conference, requiring the parties to attend a settlement conference on or before March 13, 2023. On February 14, 2023, the parties appeared in good faith at the settlement conference. Although the matter was not concluded on that date, the parties continued negotiations. This agreement for discipline by consent is a product of those ongoing discussions.

Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved. If this agreement is not accepted, the conditional admissions that follow are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Respondent conditionally admits that he misrepresented the alleged debt of homeowners in foreclosure cases, making untruthful statements about the nature of the debt, and by submitting inaccurate ledgers, and that he failed to correct that inaccurate information, in addition to other violations as set forth herein. His conduct violated Ariz. R. Sup. Ct., Rule 42, ERs 1.5, 1.7, 3.3(a)(1), 3.3(a)(3) and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: eighteen-month suspension and an order of restitution to homeowners as follows:

- Jose Guadalupe Zepeda Castillo - $859.00
- Daniel Ramirez - $1,296.00

Respondent also agrees to pay the costs[1] and expenses of this disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within 30 days, interest will begin to accrue at the legal rate.[2] The State Bar's Statement of Costs and Expenses is attached hereto as **Exhibit A**.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the Complainants by email on April 4, 2023. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of IBC's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

COUNT I

1. At all times relevant, Respondent was a member of the State Bar of Arizona, having been admitted on June 14, 2004.

2. Respondent is a solo practitioner at Cannon Law Firm, PLLC.

3. Respondent's legal practice includes representing homeowners' associations (HOAs), including in collection actions against homeowners.

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[1] Respondent contemporaneously with this consent agreement will submit an objection to one of the costs requested.

[2] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

4. During the time period relevant to this disciplinary matter, Respondent's clients included, among others, Cambridge Estate Homeowners Association ("Cambridge") and La Fuente Condominium Complex ("La Fuente").

5. In April 2014, Respondent entered into a "No Fee Collection Contract" with Cambridge. The agreement stated in part: "Cannon Law Firm, PLLC will never charge the Association for any of the fees involved with the collection of delinquent assessments. . .."

6. From 2014 through 2019, when Cambridge sent a homeowner's account to Respondent for collections, Respondent personally created and then maintained the collection ledger.

7. If this matter were to proceed to a contested hearing, Respondent will testify he created ledgers because the management companies hired by Cambridge had unreliable ledgers. If this matter were to proceed to a contested hearing, authorized representatives from the relevant management companies will testify their ledgers were accurate.

8. Respondent's ledgers did not start on the date on which the matter was transferred to Respondent for collections; Respondent started the ledger from a date when he determined the homeowner last had a balance of zero.

9. Respondent's ledger differed from the management company's ledger.

10. Respondent's ledger became the official ledger for matters in collection.

11. From 2014 through 2019, for Cambridge matters in collections, homeowner payments were collected, applied, and documented by Respondent.

12. Respondent decided how to allocate homeowner payments and at times, allocated them to himself for his legal fees. If this matter were to proceed to a contested hearing, Respondent would testify, consistent with his deposition testimony, that his fee agreement with Cambridge provided that he had discretion about how to allocate fees, and that this is the standard practice among lawyers who represent homeowners associations (HOAs).

13. If this matter were to proceed to a contested hearing, Respondent's Monthly Status reports would show Respondent did not update Cambridge when he received money in which it may have an interest. Respondent will testify that he did not provide this information at the request of the Board.

14. During the relevant time period, the following persons were or are Cambridge homeowners:

a. Dung Thi Ta, lot 281

b. Daniel Ramirez, lot 499

c. Sergio Arithzai Adriano Valdez, lot 510

d. Regina Almaraz, lot 440

e. Gonzalo Perea, lot 110

f. Manuel and Alma San Miguel, lot 531

g. Jose Guadalupe Zepeda Castillo, lot 144.

15. At all times relevant from 2014 through 2019, all Cambridge homeowners incurred a $65.00/month charge for HOA dues, and a $15.00/month late fee for untimely dues payments.

16. From 2014 through 2019, the Cambridge CC&Rs required that homeowners were responsible for the landscaping maintenance of their front yards.

17. During this time period, Cambridge also offered a voluntary landscaping program for $36.00/month and had a violation policy that provided:

> 1 = courtesy letter (15 days) – 2 = fee (30 day-advise on landscaping plan, with a minimum of 6 months on program) – 3 = fee and you're on the $36 month program. At the end of six months you will remain in the program, unless you opt out.

18. Cambridge homeowner, Ms. Ta, was automatically enrolled in the Cambridge landscaping program on September 15, 2016, as a result of alleged landscaping violations.

19. If this matter were to proceed to a contested hearing, the following homeowners would testify that they were not on the landscaping program at any time from 2014 through 2019: Mr. Ramirez, Mr. Valdez, and Ms. Almaraz. Respondent is expected to testify that the management company verbally instructed him to add landscaping charges onto Mr. Ramirez's, Mr. Valdez's, and Ms. Almaraz's ledgers.

20. Around December 2015, Cambridge instituted an enforcement assessment program which lasted from January 2016 through December 2017.

21. The purpose of the enforcement assessment program was to enhance collections.

22. As part of the enforcement assessment program, Respondent incurred attorney fees performing collection work for any matter Cambridge provided to him.

23. A homeowner need not be in collections to be in the enforcement assessment program. However, the work Respondent performed as part of the enforcement assessment program was substantially similar to the work he performed in collection cases.

24. Respondent knew in 2016, that the following Cambridge homeowners, who were in the enforcement assessment program, were *not* in collections: (a) Ms. Ta, (b) Mr. Valdez, (c) Ms. Almaraz, and (d) Mr. Castillo.

25. If this case were to proceed to a contested hearing, Respondent would testify that he undertook the enforcement assessment work at the verbal direction of the Board, in conjunction with its management company, Sentry Management, and would not have added this fee without that direction.

26. If this matter were to proceed to a contested hearing, Bradley Pomp, President of Sentry Management, is expected to testify that Sentry did not provide

homeowner accounts to Respondent for enforcement assessment collection work, and Sentry was unaware of the enforcement assessment program.

27. Homeowners in Cambridge's enforcement assessment program who did not become current or enter into a payment plan with Cambridge in 2016, were assessed an "enforcement assessment" in the amount of $2,140.00.

28. $2,140.00 represented Respondent's attorney fees for collections work performed in 2016. Respondent listed the $2,140.00 amount as a "Special Assessment" on relevant homeowners' ledger, including that of Ms. Ta, Mr. Ramirez, Mr. Valdez, Ms. Almaraz, and Mr. Castillo.

29. Homeowners in the enforcement assessment program who did not become current or enter into a payment plan with Cambridge in 2017, were assessed an "enforcement assessment" in the amount of $2,135.00.

30. $2,135.00 represented Respondent's attorney fees for collections work performed in 2017, and was listed on relevant homeowner's ledgers, including that of Ms. Ta, Mr. Ramirez, Mr. Valdez, Ms. Almaraz, and Mr. Castillo, as a "Special Assessment".

31. Respondent's enforcement assessment billing from 2016 and 2017, included non-attorney tasks that Respondent billed at his attorney rate of $350.00/hour.

32. At all times relevant from 2009 through 2019, Respondent possessed a copy of Cambridge's CC&Rs.

33. Section 8.05 of Cambridge's CC&Rs addresses enforcement assessments and states in part:

> The Board shall also have the right to levy assessments against an individual Lot and its Owner to reimburse the Association for costs incurred by the Association in connection with its efforts to require that Owner and his Lot to comply with the provision of this Declaration and the Project Documents or costs incurred by the Association in connection with causing to be done such work as is necessary to bring a Lot in such compliance. . . .

34. Section 8.04 of Cambridge's CC&Rs addresses "special assessments" and states in part:

> [T]he Board may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas and Areas of Association Responsibility. . . or to defray any unanticipated or underestimated expenses normally covered by an Annual Assessment . . . provided, however, that the aggregate special Assessment for any fiscal year shall not exceed fifty percent (50%) of the budgeted gross expenses of the Association for that Assessment year without the vote or written consent of sixty-seven percent (67%) of the membership present and voting at a meeting at which a quorum equal to fifty-one percent (51%) of the Members are present in person or by proxy.

COUNT ONE
Homeowner 1 – Dung Thi Ta

35. If this matter were to proceed to a contested hearing, Daniel Huynh, Ms. Ta's son, is expected to testify that both he and Ms. Ta considered Mr. Huynh

the owner of their property in Cambridge (lot 228), even though Ms. Ta's name appeared on the deed.

36. If this matter were to proceed to a contested hearing, Respondent would testify that Ms. Ta's name appeared on the deed, and he knew her to be the sole homeowner.

37. If this matter were to proceed to a contested hearing, Mr. Huynh is expected to testify he was known to the management company as the contact on the account.

38. On October 10, 2017, Cambridge, though its management company at the time, Sentry Management, sent Ms. Ta's account, including Sentry's ledger for Ms. Ta, to Respondent for collection.

39. On October 10, 2017, Respondent sent Ms. Ta a demand letter for $1,410.00. This demand did not include the enforcement assessment amount.

40. If this matter were to proceed to a contested hearing, Mr. Huynh would testify the October 10, 2017 letter is the only demand he received.

41. On May 21, 2018, Respondent filed a foreclosure action against Ms. Ta alleging she owed the unpaid "principal sum" of $10,996.00. (CV2018-007526, *Cambridge Estates Homeowners Association v. Ta).*

42. Cambridge's management company's ledger, including charges from May 2018, reflected that Ms. Ta owed Cambridge $2,652.00 as of May 16, 2018.

43. Respondent's ledger, later provided to the court, reflected that Ms. Ta owed $8,204.00 as of May 16, 2018.

44. Included in the alleged principal forecloseable sum of $10,996.00 are the 2016 and 2017 "special assessments" for unawarded attorney fees in the total amount of $4,275.00.

45. Included in the principal forecloseable sum of $10,996.00 are landscaping charges of $36.00/month from September 2015 through May 2018, that arose out of an alleged landscaping violation, totaling $1,188.00.

46. Respondent knew at the time he included this monthly "landscape assessment" that it was not an assessment applied universally to all Cambridge homeowners.

47. On August 28, 2018, Respondent filed his Motion for Entry of Judgment avowing to the court that Ms. Ta owed $8,552.00, "plus interest, fees and costs."

48. Respondent attached the collection ledger he personally created to his Motion for Entry of Judgment. The ledger included charges from September 1, 2015 through August 16, 2018.

49. Respondent excluded the following payments from his ledger accompanying this Motion for Entry of Judgment, which were reflected on the management company's ledger:

a.	September 2015	$100
b.	October 2015	$102
c.	November 2015	$101
d.	December 2015	$101
e.	February 2016	$101
f.	March 2016	$36
g.	April 2016	$260
h.	June 2016	$195
i.	August 2016	$195
j.	November 2016	$300
k.	March 2017	$195
l.	July 2017	$200

50. Respondent also excluded the following payments from his ledger even though he and/or his office ultimately deposited checks written on Ms. Ta's behalf by Mr. Huynh:

a. check #1168, dated May 1, 2018, in the amount of $500.00.

b. check #1191, dated May 25, 2018, in the amount of $200.00.

c. check #1243, dated August 24, 2018 in the amount of $300.00.

d. check #1275, dated October 8, 2018 in the amount of $300.00.

51. On August 23, 2018, Respondent filed his Affidavit for Attorneys' Fees and Statement of Costs. Respondent attached his Legal Fees and Costs Statement in support of the affidavit.

52. In paragraph 4 of the Affidavit Respondent asserted, "The Plaintiff [Cambridge] has paid or agreed to pay the fees herein described."

53. Cambridge had not paid the fees described, nor had it agreed to pay Respondent's fees. Rather, it assigned to Respondent its right to collect the fees from the homeowner.

54. Also in paragraph 4 of Respondent's fee affidavit, Respondent asserted that, "This compilation [of the services he rendered] . . . accurately reflects the time and effort expended on this matter through and including August 23, 2018."

55. In his supporting Legal Fees and Costs Statement, Respondent documented that he first opened the file and drafted the initial demand letter on September 10, 2017.

56. As part of this disciplinary proceeding, Respondent produced his enforcement assessment billing records documenting collections work performed from January 5, 2016 through December 18, 2017. Respondent did not produce these records to the court. Respondent did not include these entries in the compilation of services rendered.

57. Respondent's fee request and his enforcement assessment billing records included non-attorney tasks that Respondent billed at his attorney rate of $350.00/hour.

58. On October 10, 2018, the court held a default hearing in the *Ta* matter.

59. During the hearing, the following exchange occurred:

> The court: So my biggest concern with your application is what you've labeled as the assessments. The way I read the statute that deals with HOA

assessments, you can't foreclose at this point with – for some of the things that you're foreclosing upon.

. . .

Mr. Cannon: And I believe what it [A.R.S. § 33-1803] says is regular assessments, late fees, special – special assessments. And see, that's all that ever comes up for us. There may be some others. But all we have on here are regular monthly assessments. . . . .

. . . .

Mr. Cannon:. . . Your Honor, the – in the CC&Rs, page 22, section 6.04, for the association's – actually, may I – may I read that to—one to you, Your Honor?

The court: Well, I have the section right in front of me.

Mr. Cannon: Oh, okay. I'm sorry.

The court: Section 6.04.

Mr. Cannon: It's that this becomes – actually, it goes on to page 23, at the top of 23—but it becomes part of the assessment if there's a special assessment – and especially - - I look at this as almost like – it says "special assessment" **from the statement we get from the management company**. I think of it more as like a limited special assessment because it applies to a specific lot. And in this case, **I believe it was for disrepair on the lot that the association, after numerous notices of requests to have the owner handle it, had to enter upon and make the repairs to the lot itself; and then it had to do it again like a year—less than a year and a half later**.

(Emphasis added).

60. At the time Respondent made this statement, he knew he made the ledger that included the "special assessment."

61. Further, Respondent knew at the time he made the above statements that he added the "special assessment" and that it was comprised of his attorney fees.

62. During the October 10, 2018 hearing, the court questioned whether the $36.00 monthly landscape assessment was a forecloseable assessment.

63. In response to the court's inquiry, Respondent made the following representations:

a. Cambridge "does it [landscaping] for all the front lots;"

b. "But the front yard and the street and the driveway, that's all the HOA responsibility. And so this is all part of that. It's – it is monthly."

c. "Well, it's collected as a regular assessment at this association, Your Honor;"

d. When specifically asked by the court whether the fee was because of any violations, Respondent asserted "it's on all - it's on all of the statement for the homeowners. They just break it up as a separate line item."

64. At the time Respondent made the above assertions, he possessed Cambridge's CC&Rs and knew there was never a time when Cambridge included a $36.00/month landscaping charge on statements for all homeowners.

65. On October 18, 2018, the court executed a default judgment against Ms. Ta, awarding Cambridge "$8,552.00 in delinquent assessments, late fees and collection costs . . . ." The court also awarded $3,418.50 in "reasonable attorneys' fees" and $736.83 in costs, for a total judgment of $12,707.33 plus interest.

66. After the default judgment, but before Respondent obtained a Writ of Special Execution, Respondent received payments from Mr. Huynh on December 28, 2018, in the amount of $300.00, and on January 7, 2019, payment in the amount of $780.00.

67. In February 2019, Respondent deposited the $780.00 check into his operating account. Respondent did not take any action to modify the judgment and decrease it by $1,080.00 to reflect the December and January payments he received.

68. Respondent proceeded, obtaining a Writ of Special Execution asserting Ms. Ta still owed $12,707.33.

69. Mr. Huynh paid $15,427.33 to the Maricopa County Sheriff's Office in May 2019, to stop the sale of Ms. Ta's home.

70. Respondent collected $14,338.33 in attorneys fees to recover $5,841.00 for Cambridge.

71. On June 12, 2019, Respondent filed a Notice of Errata stating: "At the Hearing on October 10, 2018, the undersigned stated that he believed that two charges on Defendant's account were section 6.04 Landscape Assessments. Those should have been referred to as Section 8.05 Enforcement Assessments."

72. On July 8, 2019, Respondent filed a Reply in Support of Notice of Errata stating in part:

> Cambridge filed the Notice in order to ensure that all statements and information submitted to the Court were exactly correct, in accordance

with Rule 11. The Notice corrects one misstatement from a Hearing on October 10, 2018 in which the undersigned stated that he believed that two charges on Defendant's Account Statement were Section 6.04 Landscape Assessments. The Notice explained that those should have been referred to as Section 8.05 Enforcement Assessments.

This was the extent of the Notice. The effect of referring to a Section 8.05 assessment as a Section 6.04 assessment is zero. It is absolutely nothing. Both types of assessments are properly reflected on the Defendant's Account statement that was filed with the Court.

73. By October 4, 2019, Ms. Ta and Mr. Huynh, represented by counsel, disclosed Respondent as a witness in their action to vacate the default judgment.

74. Respondent had a conflict with the ongoing representation of Cambridge where: (a) he had been named as a relevant witness; (b) he personally created and maintained the ledger; and (c) he decided how to allocate payments at issue.

75. Respondent did not obtain Cambridge's informed written consent waiving his conflict.

76. Respondent continued to represent Cambridge where he acted as both advocate for Cambridge, and witness in the October 18, 2019 hearing.

77. During a hearing on the *Ta* matter on October 18, 2019, Respondent advised the court that the issue of his being counsel and a witness in the same case "has never been brought up. In all the years we've been doing this, I've never been called as a witness on our own."

78. In response to Respondent's statement, opposing counsel advised the court Respondent's statement was untrue and that in fact, the issue of Respondent serving as attorney and witness arose several months before in CV2018-007524 *Cambridge Estates Homeowners Association v. Alma and Manuel San Miguel.*

79. Respondent again repeated, "This has never arisen before. If this were an issue, I would have had other counsel handle the case or- I mean, I'm not sure – like I said, it's never arisen before, so."

80. Respondent did not advise the court that three months earlier he had the following exchange with Judge Mahoney in CV2018-007524 *Cambridge Estates Homeowners Association v. Alma and Manuel San Miguel*:

> Mr. Cannon, this may be the way you operate. . . but it seems to me really problematic because it seems to me it makes you a witness. It makes you a witness because it's your account that this money is being funneled though. More importantly as you've said on the record this morning, you are the actual person who put the entries in [the ledger]. You are the fact witness. You are not just the person overseeing your assistant.... But you're the one who is mechanically, physically putting that information in which means how could you not be a witness. And you can't be a witness and a lawyer in the same case. . . . So I'm a little bit thunderstruck with how do we move from here because to the extent that you continue to represent the homeowners' association, it's almost like you're wearing – never mind two hats being a lawyer and witness potentially . . . . but it's almost like you're representing both your client, the homeowners' association's interest, as well as your own firm's interest because your own firm is taking these steps.

81. After the October 18, 2019 hearing, the court set aside the default judgment in an order expressing that it had been deceived. The order stated in part:

> Amounts related to the Cannon's misrepresentations and omissions totaled $8,867.00 ($4,275 (special assessments) + $1,332.00 (lawn maintenance) + $4,401 (unapplied payments) + $65), and is greater than the principal balances of the Default Judgment's foreclosure and personal judgments.
>
> . . .
>
> [T]he Court would not have entered the Default Judgment for principal sum of $8,552.00 (foreclosure and personal) had Plaintiff informed the Court about the true nature of the "special assessments" and lawn maintenance charges identified on the Collection Ledger. Similarly, the Court would not have entered the Default Judgment for principal sum required had it been made aware of the payments Plaintiff and/or Mr. Cannon received that had been paid on behalf of Ms. Ta. Ultimately, it appears that based upon the inappropriate assessments and the failure to include payments made on Ms. Ta's behalf, Plaintiff would not have been in a position to seek a foreclosure judgment in the first instance. Further, in light of Mr. Cannon's (1) personal and direct involvement in preparing and maintaining the Collection Ledger used to support the Motion for Entry of Judgment, (2) his processing of payments received that had been paid on Ms. Ta's behalf, (3) his representations to the Court and the omissions therefrom, (4) the opportunities to correct misrepresentations and omission, and (5) his failure to correct his misrepresentations and omissions, the Court concludes that Mr. Cannon's conduct was either intentional, the result of a reckless disregard of the truth, or a combination thereof. For these reasons, the Court sets aside and vacates the Default Judgment.

Homeowner 2 – Daniel Ramirez

82. Cambridge sent Mr. Ramirez's account to Respondent for inclusion in the enforcement assessment plan.

83. On March 22, 2018, Respondent filed a foreclosure complaint against Mr. Ramirez alleging that he owed the unpaid "principal sum" of $9,541.00 (CV2018-003926 *Cambridge Estates Homeowners Association v. Ramirez*).

84. Cambridge's management company's ledger reflects that Mr. Ramirez owed Cambridge $3,311.00 as of February 16, 2018, one month before the foreclosure complaint.

85. Respondent's ledger, provided to the court, reflects that Mr. Ramirez owed $7,639.00 as of March 16, 2018.

86. Included in the alleged principal forecloseable sum of $9,541.00 are the 2016 and 2017 "special assessments" for attorney fees in the total amount of $4,275.00.

87. Included in the principal forecloseable sum of $9,541.00 are landscaping charges of $36.00/month from December 1, 2015 through November 1, 2018, totaling $1,296.00.

88. If this matter were to proceed to a contested hearing, Mr. Ramirez would testify he was not on the landscaping program. Respondent would testify that a representative of the management company verbally instructed him that Mr. Ramirez was on the monthly landscaping program and that he never would have included landscaping charges unless the management company told him to do so.

89. On November 28, 2018, Respondent filed his Motion for Entry of Judgment, avowing to the court that Mr. Ramirez owed $12,707.33, "plus interest, fees and costs."

90. Respondent attached the collection ledger he created to his Motion for Entry of Judgment. The ledger included charges from December 1, 2015 through November 1, 2018.

91. Respondent excluded $260.00 in payments he received from Mr. Ramirez, and about which, he updated Cambridge via an October 31, 2017 monthly status report that Respondent authored.

92. On November 27, 2018, Respondent filed his Affidavit for Attorneys' Fees and Statement of Costs. Respondent attached his Legal Fees and Costs Statement in support of the motion.

93. In paragraph 4 of the Affidavit, Respondent asserted, "The Plaintiff [Cambridge] has paid or agreed to pay the fees herein described."

94. Cambridge had not paid, nor agreed to pay Respondent.

95. In paragraph 4 of Respondent's fee affidavit, Respondent asserted that, "This compilation [of the services he rendered] . . . accurately reflects the time and effort expended on this matter through and including November 27, 2018."

96. In his supporting Legal Fees and Costs Statement, Respondent documented that he first opened the file and drafted the initial demand letter on January 31, 2018.

97. As part of this disciplinary proceeding, Respondent produced his enforcement assessment billing for Mr. Ramirez's case reflecting work from January 7, 2016 through December 18, 2017.

98. Respondent did not provide that information to the court.

99. Respondent collected $15,043.83 in attorneys' fees to recover $6,797.50 for Cambridge.

Homeowner 3 - Sergio Arithzai Adriano Valdez

100. Mr. Valdez was the owner of a home in Cambridge Estates at lot #510.

101. Mr. Valdez's account was sent to Respondent for the enforcement assessment program in January 2016.

102. On August 6, 2018, Respondent filed a foreclosure action against Mr. Valdez alleging Mr. Valdez owed the unpaid "principal sum" of $8,110.00. (CV2018-010098, *Cambridge Estates Homeowners Association v. Valdez*).

103. Included in the alleged principal forecloseable sum of $8,110.00 are the 2016 and 2017 "special assessments" for attorney fees in the amount of $4,275.00.

104. Included in the principal forecloseable sum of $8,110.00 are landscaping charges of $36.00/month from December 1, 2015 through November 1, 2018, totaling $1,296.00.

105. If this matter were to proceed to a contested hearing, Mr. Valdez is expected to testify he was not on the monthly landscaping program. Respondent

would testify that a representative of the management company verbally instructed him that Mr. Valdez was on the monthly landscaping program and that he never would have included landscaping charges unless the management company told him to do so.

106. On November 28, 2018, Respondent filed his Motion for Entry of Judgment, avowing to the court that Mr. Valdez owed $12,707.33, "plus interest, fees and costs."

107. Respondent attached the collection ledger he personally created to his Motion for Entry of Judgment. The ledger included charges from November 16, 2015 through November 1, 2018.

108. On November 27, 2018, Respondent filed his Affidavit for Attorneys' Fees and Statement of Costs. Respondent attached his Legal Fees and Costs Statement in support of the motion.

109. In paragraph 4 of the Affidavit, Respondent asserted, "The Plaintiff [Cambridge] has paid or agreed to pay the fees herein described."

110. Cambridge had not paid Respondent, nor had it agreed to pay him.

111. In paragraph 4 of Respondent's fee affidavit, Respondent asserted that, "This compilation [of the services he rendered] . . . accurately reflects the time and effort expended on this matter through and including November 27, 2018."

112. In his supporting Legal Fees and Costs Statement Respondent documented that he first opened the file and drafted the initial demand letter on April 10, 2017.

113. As part of this disciplinary proceeding, Respondent produced his enforcement assessment billing records for Mr. Valdez which document time spent from January 5, 2016 through December 11, 2017.

114. Respondent did not produce his enforcement assessment billing records to the court.

115. On or around January 25, 2019, Respondent resolved this matter with Mr. Valdez for $18,890.00.

116. Respondent was paid $14,840.00 in attorneys fees to collect $4,050.00 on behalf of Cambridge.

Homeowner 4 – Regina Almaraz

117. Regina Almaraz purchased her home in Cambridge Estates in May 2016.

118. Respondent's enforcement assessment billing shows that on January 7, 2016, he spent 1.2 hours to "start a new delinquency matter" as to Ms. Almaraz, including "research ownership and make sure that there are no impediments to collecting a consumer debt from this homeowner."

119. According to Respondent's Legal Fee and Costs Statement, later submitted to the court as part of the foreclosure action, Respondent asserted that again on April 10, 2017, billed 1.2 hours to "Open in time matters database program. Open billing matters file, Research title ownership at County Recorders Office. Research ownership and value at Treasurer's Office. Research bankruptcy court to confirm that there are no impediments to collecting a consumer debt from this homeowner...."

120. At the time she purchased the home, Ms. Almaraz prepaid her monthly dues for six (6) months (June- November 2016) in the amount of $390.00.

121. Ms. Almaraz's account was sent to Respondent for collection in September 2017. At this time, Ms. Almaraz's owed Cambridge $960.00.

122. On May 15, 2018, Respondent filed a foreclosure complaint against Ms. Almaraz alleging the principal balance she owed was $9,910.00.

123. One day later, on May 16, 2018, Respondent sent Ms. Almaraz a demand asserting she owed $12,588.50.

124. The ledger that Respondent personally created and maintained, showed that as of May 16, 2018, Ms. Almaraz owed $7,871.00.

125. Included in the alleged principal forecloseable sum of $9,910.00 are the 2016 and 2017 "special assessments" for unawarded attorney fees in the total amount of $4,275.00.

126. Included in the principal forecloseable sum of $9,910.00 are landscaping charges of $36.00/month from December 1, 2015 through November 1, 2018, totaling $1,296.00.

127. Respondent knew at the time he included this monthly "landscaping assessment" that it was not an assessment applied universally to all Cambridge homeowners.

128. Excluded from the principal forecloseable sum was the $390.00 of assessments Ms. Almaraz prepaid upon purchasing her home.

129. On November 28, 2018, Respondent filed his Motion for Entry of Judgment avowing to the court that Ms. Almaraz owed $12,707.33, "plus interest, fees and costs."

130. Respondent attached the collection ledger he personally created to his Motion for Entry of Judgment. The ledger included charges from November 15, 2015, before Ms. Almaraz owned the property, through November 1, 2018.

131. On November 27, 2018, Respondent filed his Affidavit for Attorneys' Fees and Statement of Costs. Respondent attached his Legal Fees and Costs Statement in support of the motion.

132. In paragraph 4 of the Affidavit, Respondent asserted, "The Plaintiff [Cambridge] has paid or agreed to pay the fees herein described."

133. Cambridge had not paid and had not agreed to pay Respondent's fees.

134. In paragraph 4 of Respondent's fee affidavit, Respondent asserted that, "This compilation [of the services he rendered] . . . accurately reflects the time and effort expended on this matter through and including November, 2018."

135. In his supporting Legal Fees and Costs Statement Respondent documented that he first opened the file and drafted the initial demand letter on April 10, 2017.

136. As part of this disciplinary proceeding, Respondent produced his enforcement assessment billing records which show Respondent began performing collections work as to Ms. Almaraz on January 7, 2016, and continued through December 22, 2017. This documentation was not provided to the court.

137. Ms. Almaraz paid $14,415.89 to Respondent to stop foreclosure of her home.

138. Respondent incurred $11,535.89 in attorney fees to recover $2,880.00 for Cambridge.

Homeowner 5 – Gonzalo Perea

139. Gonzalo Perea was the owner of a home in Cambridge Estates at lot 110.

140. In September 2017, Cambridge transferred Mr. Perea's account to Respondent for collections. At that time, Mr. Perea owed Cambridge $735.00.

141. On May 21, 2018, Respondent filed a foreclosure complaint against Mr. Perea alleging the principal foreclosable balance was $9,365.00.

142. On June 11, 2018, Mr. Perea entered into a payment plan with Respondent.

143. Mr. Perea made the following payments that Respondent allocated to his fees without timely notifying Cambridge:

a. June 11, 2018, $2,500.00.

b. August 9, 2018, $355.00.

c. October 6, 2018, $355.00.

d. January 9, 2019, $355.00.

e. February 8, 2019, $355.00.

f. March 8, 2019, $356.00.

g. May 9, 2019, $355.00.

h. July 10, 2019, $355.00.

i. August 9, 2019, $355.00.

j. October 10, 2019, $355.00.

144. Respondent's April 1, 2019 status report advised Cambridge that on September 20, 2019, Mr. Perea entered into a payment plan and that, "After it is received and clears the trust account, funds will be disbursed to the Association."

145. Respondent's April 1, 2019 status report in Perea does not reflect payments made by Mr. Perea and received by Respondent on October 6, 2018, January 9, 2019, and February 8, 2019.

146. Respondent's August 2, 2019 status report does not reflect the March 8, 2019 payment Mr. Perea made.

147. Respondent's November 1, 2019 status report does not reflect the July 10, 2019, and August 9, 2019 payments.

Homeowner 6 - Jose Castillo

148. Jose Castillo purchased a home in Cambridge Estates in March 2016. At the time of closing, he prepaid the $65.00 monthly assessments through June 2016.

149. On March 21, 2018, Respondent filed a foreclosure action against Mr. Castillo alleging he owed the unpaid "principal sum" of $9,205.00. (CV2018-003898, *Cambridge Estates Homeowners Association v. Castillo*).

150. Cambridge's management company's ledger, including charges from February 16, 2018, reflected that Mr. Castillo owed Cambridge $3,315.00 as of that date.

151. Respondent's ledger, provided to the court, reflected that Mr. Castillo owed $7,272.00 as of March 16, 2018.

152. Prior to filing the foreclosure complaint, Respondent billed 1.2 hours of time on July 15, 2017, to "open in time matters database program, open billing matters file. Research title ownership at County Recorders Office. Research ownership and value at Treasurer's Office. Research bankruptcy court to confirm that there are no impediments to collecting a consumer debt from this homeowner. . .."

153. Included in the alleged principal forecloseable sum of $9,205.00 are the 2016 and 2017 "special assessments" for unawarded attorney fees in the amount of $4,275.00.

154. On August 22, 2018, Respondent filed his Motion for Entry of Judgment avowing to the court that Mr. Castillo owed $7,852.00, "plus interest, fees and costs."

155. Respondent attached the collection ledger he personally created to his Motion for Entry of Judgment. The ledger included charges from September 1, 2015 through August 16, 2018.

156. Respondent's ledger included charges incurred before Mr. Castillo owned the property.

157. The ledger also excluded payments Mr. Castillo made in the amount of $303.00 that were documented on the management company's ledgers.

158. On August 22, 2018, Respondent filed his Affidavit for Attorneys' Fees and Statement of Costs. Respondent attached his Legal Fees and Costs Statement in support of the motion.

159. In the supporting Legal Fee and Cost Statement, Respondent billed all work, including paralegal tasks, at his hourly rate $350.00/hr.

160. In paragraph 4 of the Affidavit, Respondent asserted, "The Plaintiff [Cambridge] has paid or agreed to pay the fees herein described."

161. Cambridge had not paid and had not agreed to pay Respondent's fees described.

162. In paragraph 4 of Respondent's fee affidavit, Respondent asserted that, "This compilation [of the services he rendered] . . . accurately reflects the time and effort expended on this matter through and including August 22, 2018."

163. In his supporting Legal Fees and Costs Statement, Respondent documented that he first opened the file and drafted the initial demand letter on July 15, 2017.

164. Respondent's fee assessment did not reflect the time and effort expended, as it excluded fees incurred prior to July 2017.

165. On October 9, 2018, the court signed the Judgment and Degree of Foreclosure awarding Cambridge $7,852.00 in "delinquent assessments, late fees

and collection costs" plus $3,815.00 in "reasonable attorneys' fees" plus costs. The total amount of the judgment was $12,393.22, plus interest.

166. On December 18, 2018, Mr. Castillo paid $11,320.00. That same day, Respondent wrote a check in the amount of $8,770.00 to Chase Bank NA, an account he controlled, and on December 27, 2018, he wrote a check in the amount of $2,550.00 to Cambridge.

Homeowner 7 – Alma and Manuel San Miguel

167. Mr. and Mrs. San Miguel were owners of a home in Cambridge.

168. On May 21, 2018, Respondent filed a foreclosure complaint alleging the San Miguels owed a principal forecloseable balance of $9,898.00.

169. In or around June 2019, Respondent and counsel for the San Miguels were engaged in a discovery dispute, which led to a July 12, 2019 hearing.

170. During the July 12, 2019 discovery hearing, Respondent told the court the "only time" homeowner funds went into his operating account was when he and the owner had a "payment plan" "and it may say on there that certain payments are for attorney's fees and so those will be – those will be deposited to the operating account."

171. On two previous occasions, June 30, 2017, and February 12, 2018, Respondent deposited money paid by the San Miguels into his operating account even though neither he nor Cambridge had a payment plan with the San Miguels.

172. During the hearing, Respondent told the court that neither he nor his client had a copy of the 2009 fee agreement. Respondent indicated to the court that he made some effort to find the fee agreement. The following exchange occurred:

> Mr. Cannon: Yeah, it was – it flooded our first two levels of the file cabinets [referring to a flood Respondent's office experienced in 2011]. So we had that [the 2009 contract with Cambridge], along with a lot of other documents from a decade ago—it's gone. We don't have it.
> The court: Your client doesn't have a copy of its contact?
> Mr. Cannon: No, because the management companies have switched a number of times.
> The court: Don't they usually kind of forward their files to one another?
> Mr. Cannon: You would think so but it's a very imperfect process of it.
> The court: so –
> Mr. Cannon: So we don't have it. We don't have our old agreement.
> ...
> Mr. Wood (opposing counsel): So I just need to have it confirmed that there is no fee agreement in any – there is no paper fee agreement in existence.
> Mr. Cannon: That's what I just said, yes.
> The court: All right, I'll have the minute entry reflect that so that we can come back to that, if necessary, in the future. I mean if it turns out it's discovered, absolutely it needs to be produced. But at this point, Plaintiff's counsel is indicating that he has looked and . . . There is no digital copy, and there is no paper copy of that fee agreement. So neither a paper copy or a digital copy exists to Plaintiff's knowledge of the fee agreement between Mr. Cannon and the Plaintiff.

173. One year prior to the hearing, Respondent had provided the 2009 fee agreement to Cambridge's management company, Pride Community Management ("Pride").

174. Pride possessed the 2009 fee agreement on July 12, 2019, when Respondent represented to the court it could not be produced.

175. During the July 12, 2019 hearing, the following exchange occurred:

> The court: Mr. Cannon, why is the money [checks written from homeowners] going into your account as opposed to the homeowner's association account?
> Mr. Cannon: Your Honor, our firm, when it comes close to collections, when it becomes delinquent. The homeowners' association, the management company, sends it to our firm. And we maintain the account until it's out of collections –until it's current. So if payments are sent, they go to our law firm trust account **and then we write a corresponding check to the homeowners' association**.

(Emphasis added).

176. At the time Respondent made the above statements, he knew he may not send a corresponding amount to Cambridge.

177. During the July 12, 2019 hearing the following exchange occurred:

> The court: Doesn't that [accounting for the homeowner's funds] make you a witness? I mean think about it. There's no judgment. . . . But at a point when the actual assessments that are delinquent are in dispute and there's been no court resolution of it. If you are the person or you are the entity who's receiving the money and handling the money, accounting for it, categorizing it, applying it – you know –that's important here. What's being applied to assessments, verses fees, verses attorneys' fees, versus costs – all of that. Doesn't that make you folks witnesses to all that because you're the people that are doing that, aren't you?
> Mr. Cannon: Well, Your Honor, I would say not any more so than any other vendor that's handling money for a client, for an HOA entity.
> The court: Well, that's true, but they're not the lawyer. You're the –
> Mr. Cannon: Your Honor, we send that over, we're not the only one handling it. We sent it over to the management company.
> The court: You send?
> Mr. Cannon: **We send the funds, ultimately, over to the management company**.
> The court: So if Mr. Woods were to pay something yesterday –
> Mr. Cannon: Yes.

The court: It would go to you?
Mr. Cannon: Yes, Your Honor.
The court: But then you would send it to the management company?
Mr. Cannon: Yes, Your Honor.
The court: And who does the accounting of it? Who—
Mr. Cannon: I believe our office – we actually have – I think our office keeps track of it and the management company **both**. Both as agents and vendors of the homeowners' association.

(Emphasis added).

178. At the time Respondent told the court he sent the funds to the management company he knew he might not send the entire amount the homeowner paid because Respondent decided how to allocate the payment.

179. At the time Respondent told the court that both he and the management company kept track of the accounting, Respondent knew only he kept track of account ledgers for matters in collections.

180. As a result of the July 12, 2019 hearing, the court ordered, among other things that Respondent disclose his trust accounts, and if that "does not answer all the questions regarding payments made by Defendants" then Respondent must produce his operating account records.

181. By the time the court issued its order, Respondent had a personal conflict with the ongoing representation of Cambridge.

182. Respondent did not obtain the informed written consent of his client waiving the conflict.

183. Respondent continued the representation, including advising Cambridge to settle the matter.

Homeowner 8 – John Harris

184. John Harris was the owner of a home in La Fuente Condominium Complex ("La Fuente HOA").

185. In February 2018, Respondent represented La Fuente HOA and performed collection work on behalf of La Fuente.

186. Around February 1, 2018, Respondent filed a foreclosure complaint against Mr. Harris for the principal balance of $9,562.96.

187. Around February 21, 2018, Mr. Harris agreed to pay Respondent $1,000.00 for his outstanding debt owed to La Fuente.

188. Mr. Harris asked Respondent to confirm via text messages that the $1,000.00 payment would be applied to his HOA dues.

189. Respondent's office purportedly asserted via text message that the $1,000.00 payment should be made payable to "Sean Cannon so it can be credited right away" but that it would apply to outstanding HOA dues. Respondent denies this occurred because he did not know how to use texting programs in 2018, however, he acknowledges that it appeared to be his telephone number from which the relevant texts were sent.

190. Mr. Harris wrote the $1,000.00 check as purportedly instructed to Respondent.

191. Respondent deposited the check in his operating account and did not initially account for the money on his ledger. It was applied at a later point to the ledger.

COUNT TWO

192. Judge Garbarino presided over in CV2018-007526, *Cambridge Estates Homeowners Association v. Ta.*

193. He issued orders dated December 31, 2019, and April 27, 2020, that he provided to the State Bar.

194. Judge Garbarino's December 31, 2019 order arose from the October 18, 2019 hearing in the *Ta* matter.

195. Among other things, Judge Garbarino made the following findings:

a. "At the October 18, 2018 continued hearing, Mr. Cannon did not inform the Court about the true nature of the "special assessments" or "lawn maintenance charges" or that Plaintiff, its agent, and he had received payments paid on behalf of Ms. Ta that would have reduced the amount due."

b. "Mr. Cannon knew at the time of the October 10 and 18, 2018 hearing, that the $2,140 and $2,135 in "special assessments" were not properly included on the Collection Ledger as either "special assessments" or

"enforcement assessments" and should not have been on the Collection Ledger at all."

c. "Mr. Cannon did not offer any evidence of the fees and costs that could have given rise to an "enforcement assessment" under Section 8.05."

d. "Mr. Cannon's initial demand letter in October 2017, stating the balance owed was just $1,410, did not reflect either the $2,140 assessment or the $2,135 assessment, indicating that these amounts were added after-the-fact."

e. "Mr. Cannon's billing records do not demonstrate that any work was performed prior to September 2017."

f. "Mr. Cannon knew, or should have known, that the lawn maintenance charges were fines, not assessments, and should not have been included in the foreclosure judgment. . . ."

g. "Mr. Cannon knew that Plaintiff, its agents, and he had received payments that would have reduced the principal balance of the Default Judgment."

h. "In this case, Ms. Ta has presented clear and convincing evidence that the Default Judgment was procured by fraud, misrepresentations, and/or omissions of material information."

i. "Ultimately, it appears that based upon the inappropriate assessments and the failure to include payments made on Ms. Ta's behalf, Plaintiff would not have been in a position to seek a foreclosure judgment in the first instance."

j. "Further, in light of Mr. Cannon's (1) personal and direct involvement in preparing and maintaining the Collection Ledger used to support the Motion for Entry of Judgment, (2) his processing of payments received that had been paid on Ms. Ta's behalf, (3) his representations to the Court and the omissions therefrom, (4) the opportunities to correct misrepresentations and omissions, and (5) his failure to correct his misrepresentations and omissions, the Court concludes that Mr. Cannon's conduct was either intentional, the result of a reckless disregard of the truth, or a combination thereof."

196. In his April 27, 2020 minute entry, Judge Garbarino denied Cambridge's Motion for a New Trial or in the Alternative, Motion for Reconsideration stating, among other things:

> The Court concluded that it would not have entered the default judgment but for Mr. Cannon's misrepresentations and omissions of information during the default proceedings, and that despite opportunities to correct his misrepresentations, a sheriff's sale was held. The Court further concluded that Mr. Cannon's actions were intentional or the result of a reckless disregard of the truth. Plaintiff has not challenged any of the Court's factual findings underpinning the Court's conclusions. The Court's findings support the conclusion that the Default Judgment was the result of a fraud on the court and should have been set aside. The timing of when Defendant asserted her objections to the Default Judgment is not material.

CONDITIONAL ADMISSIONS
COUNTS ONE & TWO

197. Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits the following:

Conditional Admissions Regarding Violation of ER 1.5

198. Respondent charged an unreasonable fee as set forth in his Affidavit of Attorneys' Fees and Statement of Costs in both the *Ta* and *Castillo* matters where Respondent billed all work, including paralegal work, at his attorney hourly rate of $350.00/hr.

199. Respondent charged an unreasonable fee in his enforcement assessment billing notes in the *Ta*, *Ramirez*, *Valdez* and *Almaraz* matters by billing all work, including paralegal work, at his attorney rate of $350.00/hr.

200. Respondent collected an unreasonable fee in the following matters :

a. *Ta*: $14,338.33 to recover $5,841 in a case where ultimately, the foreclosure judgment was vacated.

b. *Ramirez*: $15,043.83 to recover $6,797.50.

c. *Valdez*: $14,840.00 to recover $4,050.00.

d. *Almarez*: $11,535.39 to recover $2,880.00.

e. *Castillo*: $8,770.00 to recover $2,550.00.

Conditional Admissions Regarding Violation of ER 1.7

201. Respondent was on notice no later than October 4, 2019, that he was a relevant witness in the *Ta* litigation. He did not obtain his client's informed, written consent, but continued to represent Cambridge, including by both appearing as an advocate and witness in the same hearing.

202. In the San Miguel case, Respondent was on notice no later than July 12, 2019, that he had a personal conflict of interest in continuing to represent Cambridge where the court ordered Respondent to produce both his trust account and operating account records, and advised him he was a witness. Respondent did not obtain his client's informed, written consent, but continued to represent Cambridge.

Conditional Admissions Regarding Violation of ER 3.3(a)(1)

203. Respondent untruthfully affirmed to the court, in an under-oath statement based on his personal knowledge, that the following homeowners owed the following specific amounts "plus … fees …", implying fees were excluded, but where Respondent knew the specified amount included $4,275.00 in attorney fees:

Motion	Case	Amount Sought	Fees Included
Motion for Entry of Judgment and Sum Certain Affidavit	*Ta*	$8,552.00	$4,275.00
Motion for Entry of Judgment and Sum Certain Affidavit	*Ramirez*	$12,707.33	$4,275.00
Motion for Entry of Judgment and Sum Certain Affidavit	*Valdez*	$12,707.33	$4,275.00

Motion for Entry of Judgment and Sum Certain Affidavit	*Almaraz*	$12,707.33	$4,275.00

204. Respondent inaccurately included landscaping charges in the principal forecloseable balance misrepresenting the total amount due in *Ramirez, Almaraz* and *Valdez* where he included unowed landscaping charges in the principal forecloseable balance.

205. Respondent misrepresented the total amount due in the *Almaraz* and *Castillo* cases where he including amounts owed prior to the date when Respondent knew the subject homeowners purchased their respective property.

206. Respondent filed an Affidavit for Attorneys' Fees and Statement of Costs in the following matters: *Ta, Ramirez, Valdez,* and *Almaraz.* In each, he included the following language: "Attached hereto is a compilation of the services rendered by the Cannon Law Firm, PLLC. . . . This compilation is derived from the regularly maintained business records of the Cannon Law Firm, PLLC and *accurately reflects the time and effort expended on this matter through and including*...[case specific date]". (Emphasis added). Despite this assertion, Respondent knew he excluded a portion of his attorneys fees as a "special assessment" as follows:

Date of first billing entry Respondent provided to the court with his motion	Date of first billing entry Respondent provided to the State Bar
9/10/2017 "open" the matter, research title and draft "initial demand"	1/5/2016 "start new delinquency matter per Board", research title and "send first letter."

1/31/2018 "open" the matter, research title and draft "initial demand letter"	1/7/2016 "start new delinquency matter per Board", research title and "send first letter".
4/10/2017 "open" the matter, research title and draft "initial demand letter"	1/5/2016 "start new delinquency matter per Board", research title and "send first letter".
4/10/2017 "open" the matter, research title and draft "initial demand letter"	1/7/2016 "start new delinquency matter per Board", research title and "send first letter".

207. In his Affidavit for Attorneys' Fees and Statement of Costs in the following matters: *Ta, Ramirez, Valdez,* and *Almaraz,* Respondent asserted, "The Plaintiff [Cambridge] *has paid or agreed to pay* the fees herein described", despite knowing Cambridge had not paid him, and had not agreed to pay his fees because the individual delinquent homeowners were responsible for paying attorneys fees involved in collection/foreclosure matters.

208. Respondent obtained a Writ of Special Execution in the *Ta* matter asserting Ms. Ta owed $12,707.33, omitting that he received and deposited Mr. Huynh's December 28, 2018 check in the amount of $300.00 and his January 7, 2019 payment in the amount of $780.00.

209. During the October 10, 2018 *Ta* hearing, Respondent inaccurately represented that the "special assessment" came from the statement he got "from the management company," when he had added the "special assessment" to the ledger he created.

210. During this same hearing, Respondent inaccurately represented that the nature of the "special assessment" was for dis-repair, even though he knew the "special assessment" was for his attorneys' fees.

211. During this same hearing, Respondent inaccurately represented that Cambridge paid for and performed the landscaping on all front lots, even though he knew this was untrue.

212. Respondent appeared before the court for another hearing in the *Ta* case on October 18, 2019. During the hearing, Respondent inaccurately told the court that the issue (of him being both counsel and a witness) had not come up before, even though he knew it had been raised just three months before.

213. During the July 12, 2019 S*an Miguel* hearing, Respondent inaccurately represented when homeowners' funds were deposited into his operating account, despite his knowledge that he, within his discretion, deposited homeowner funds into his operating account.

214. During this same hearing, Respondent misrepresented his efforts to obtain and the availability of his 2009 fee agreement.

215. During the same hearing, Respondent inaccurately represented that both he and the management company were "handling" homeowner funds, when he knew he unilaterally received and allocated the funds.

216. During the *San Miguel* hearing, Respondent inaccurately represented that both he and the management company were keeping track of homeowner accounts, despite knowing that he and not the management company kept track of the accounts.

Conditional Admissions Regarding Violation of ER 3.3(a)(3)

217. Respondent personally created the ledgers he produced to the court as evidence of the homeowners' alleged debt in the following matters: *Ta, Ramirez, Valdez, Almaraz* and *Castillo.*

218. In the *Almaraz* and *Castillo* ledgers, Respondent falsely inflated the homeowners' alleged debt by adding amounts to the ledger prior to the date the owner purchased the property.

219. In the *Ta, Ramirez, Almaraz,* and *Castillo* ledgers, Respondent falsely inflated the homeowners' debt by excluding known payments.

220. In the *Ramirez, Almaraz,* and *Valdez* matters, Respondent inaccurately included charges for landscaping, even though the homeowners listed in this paragraph were not on the landscaping program.

Conditional Admissions Regarding Violation of ER 8.4(d)

221. Respondent's misrepresentations set forth above regarding the *Ta, Ramirez, Almaraz, Valdez, Castillo,* and *San Miguel* cases, caused delay, prevented the court from serving in its oversight role, and cost the court time and resources.

CONDITIONAL DISMISSALS
COUNTS ONE & TWO

IBC has conditionally agreed to dismiss the following alleged violations where there is some redundancy and in an effort to compromise: ERs 1.15(d), 3.1, 8.4(a) and 8.4(c).

RESTITUTION

Respondent agrees to an order that he be required to pay restitution as follows:

Mr. Castillo, $859.00

Mr. Ramirez, $1,296.00

The parties agree no other restitution in appropriate.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: eighteen (18) month suspension and payment of restitution as set forth herein. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought. To allow Respondent to complete all projects for his existing HOA clients, and so as to not unduly prejudice them, Respondent requests that his suspension start on July 1, 2023.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant

to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

Generally, the most severe sanction guides the analysis. The parties agree that *Standard* 6.12 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.12 states, "Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding." Here, Respondent conditionally admitted to submitting inaccurate ledgers and making numerous misrepresentations to the court in the *Ta, Ramirez, Almaraz, Valdez, Castillo* and

San Miguel matters causing actual injury to the public, the profession, and the legal system.

The duty violated

As described above, Respondent's conduct violated his duty to the legal system, the profession, and the public.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly made misrepresentations of facts to the court, as set forth above, negligently charged an unreasonable fee, and failed to obtain a conflict waiver.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to Ms. Ta, Mr. Huynh, Mr. Ramirez, Ms. Almaraz, Mr. Valdez, Mr. Perea, Mr. Castillo, the San Miguels, Mr. Harris, the legal system, and the legal profession.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

1. *Standard* 9.22(b) (dishonest or selfish motive). Respondent had a dishonest or selfish motive where he made misrepresentations to the court to effectuate inflated payments.

2. *Standard* 9.22(h) (vulnerability of victim). Ms. Ta, Mr. Ramirez, Mr. Valdez, Ms. Almaraz, Mr. Perea, Mr. Castillo, Mr. Harris, and Mr. and Mrs. San Miguel are not law trained or familiar with the legal system.

3. *Standard* 9.22(i) (substantial experience in the practice of law). Respondent, who has been practicing since 2004, has substantial experience in the practice of law.

In mitigation:

1. *Standard* 9.32(c) (personal or emotional problems). Respondent attaches this information as Exhibit B, which is subject to Respondent's simultaneously filed request to seal, pursuant to Rule 70(g).

2. *Standard* 9.32 (e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings). Respondent cooperated during this proceeding.

3. *Standard* 9.32(j) (delay in disciplinary proceedings). There has been delay in this matter that is not attributable to Respondent.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate and that the aggravating and mitigating factors were appropriately considered and applied. This agreement was based on evaluation of the factors listed in greater detail above.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, IBC and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of an eighteen (18) month suspension, order of restitution, plus the imposition of costs and expenses. A proposed form order is attached hereto as **Exhibit C.**

DATED this 4th day of April, 2023.

Meredith Vivona
Independent Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 3rd day of April, 2023.

Sean Cannon
Respondent

DATED this 4th day of April, 2023.

Nancy A. Greenlee
Respondent's Counsel

DATED this 4th day of April, 2023.

Patricia A. Sallen
Respondent's Counsel

Approved as to form and content

April Elliott
Executive Director, Commission on Judicial Conduct

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 4th day of April, 2023.

Copy of the foregoing emailed this 4th day of April, 2023 to:

Nancy A. Greenlee
821 E. Fern Dr North
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Respondent's Counsel

Patricia A. Sallen
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Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
lro@staff.azbar.org

By: 

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of The State Bar of Arizona,
Sean Cannon, Bar No. 022137, Respondent.

File No(s). 19-2942 and 20-1076

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings	**$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Additional Costs

01/26/22	Deposition (Cannon Vol 1)- Alliance	$ 512.50
01/26/22	Transcripts (Cannon Vol 1)- Alliance	$1,119.50
02/16/22	Deposition & Transcripts (Cannon Vol 2)- Alliance	$ 895.65
04/18/22	Deposition & Transcripts (Cannon Vol 3)- Alliance	$ 727.95
10/04/22	Legal Expert	$ 900.00
Total for additional costs		$4,155.60
TOTAL COSTS AND EXPENSES INCURRED		$5,355.60

EXHIBIT B

Exhibit B

Respondent asserts he experienced personal or emotional problems during the relevant time period where his sister, with whom he was very close, was ill and ultimately passed. He had lived with and took care of his sister, Jean, during her lengthy illness. Jean also had been employed by Respondent in his law office and handled bookkeeper and accounts, and during her decline was unable to do so. Respondent also lost numerous rescue dogs, with whom he was also very close.

EXHIBIT C

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **SEAN CANNON,** **Bar No. 022137,** Respondent.	**PDJ -2022-9077** [State Bar Nos. 19-2942 & 20-1076] **[PROPOSED] FINAL JUDGMENT AND ORDER**

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on April 4, 2023, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, Sean Cannon, is hereby suspended for eighteen (18) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective _____.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that Respondent pay Restitution as follows:

Jose Guadalupe Zepeda Castillo - $859.00

Daniel Ramirez - $1,296.00

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $ _____, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of April, 2023.

_____
Margaret H. Downie, Presiding Disciplinary Judge

Copies of the foregoing emailed
this _____ day of April, 2023, to:

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Respondent's Counsel

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Respondent's Counsel

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Phoenix, Arizona 85007
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by: _____